

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1105 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 NO.

STATE OF GUJARAT

Versus

VECHATBHAI SURSINH BARAIYA KOTDA

Appearance:

MR D.N.Patel, in-charge P.P.for Appellant

MR RN SHAH for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 28/06/1999

ORAL JUDGEMENT

1. Being aggrieved by the judgment and decree dated 17-9-91, passed by the then learned Judicial Magistrate (First Class), at Godhra, in Criminal Case No.3223/88 on his file, acquitting the respondents (original accused)

of the offence punishable under Sections 323, 325 and 504 read with Section 114 of the Indian Penal Code, the prosecution has preferred this appeal.

2. The case of the prosecution may in brief be stated : On 1-8-1988 at 14-45 hours on the back of her house at Kotda, Guliben-the complainant was grazing her cattle. At that time, the respondent No.1 went to her and started to abuse her. He also stated that she was a witch and was by witch-craft causing death of many children in the village. Thereafter, she was beaten with the stick respondent No.1 was having. She sustained injury on her wrist and back. Thereafter, rest of the respondents reached there. They also abused her and caused injury by kick and fist blows. She shouted for the help. Natvarsinh Koderbhai, Daliben Somabhai, Kokilaben Rubhai and others were amongst those who had rushed to the scene of incident hearing the shouts. They rescued her. She was then taken to the hospital for treatment. A complaint against the present respondents was then lodged with Godhra Taluka Police Station. The police officer of that police station at the conclusion of investigation filed the charge sheet against the respondents relating to the abovementioned offences in the court of the Judicial Magistrate (First class), at Godhra. The lower court recorded the plea after framing the charge Exh.3. The respondents pleaded not guilty. The prosecution led necessary evidence to prove the charge levelled against the respondents. The learned Magistrate appreciating the evidence on record held that the prosecution failed to prove the charge levelled against the present respondents. He, therefore, acquitted all the respondents. It is against that order of acquittal, the present appeal is filed.

3. Mr. D.N.Patel, learned in-charge Public Prosecutor finding the fault with the lower court submits that the appreciation of the evidence and conclusions drawn by the lower court are certainly arbitrary and perverse. This court may, therefore, interfere with the order of acquittal and convict the respondents. According to him, the complaint was filed at the earliest and the injured was getting the support from the evidence of the doctor who treated her. Not only that, but some of the witnesses examined also supported Guliben-the injured. There was no reason for the J.M.F.C. to find fault with the corroborative evidence available on record and acquit the respondents.

4. With meticulous care and finicky details, I have gone through the evidence on record and the judgment

delivered by the lower court. Nowhere I find a justifiable reason to interfere with the findings given by the lower court. When I am in general agreement with the lower court, it is not necessary to restate all the reasonings given by the learned Judge. However, with regards to the submission made before me, I will deal with the evidence on record and show how the learned Judge is right in appreciating the evidence and drawing the conclusions.

5. No doubt, Dr. Shalini Basantilal, examined at Exh.30 supports the case of injury on the person of Guliben, but that evidence in no case is helpful to the prosecution in showing that respondents or either of them caused the injury. For that the evidence of other witnesses examined has to be dissected. Daliben Somabhai (Exh.20), Kokilaben Virsingbhai (Exh.21), Abhesingh Kalubhai (Exh.22), Balvantsing Ranchhodbhai (Exh.24) and Mangalsing Bhathi (Exh.27) have not supported the case of the prosecution though according to the prosecution they rushed to the scene of offence hearing the shouts and have witnessed the incident. Except Mangalsing Bhathi everyone turned hostile as they stated before the Court that they did not witness the incident and they were not knowing about the incident. They merely signed the panchnama or gave a statement to the police. Mangalsing Bhathi is serving as Police Constable in Godhra Taluka Police Station. He simply produced an entry from the Crime Register at Exh.28, in order to show that Guliben gave the complaint. This witness does not have the personal knowledge as he did not witness the incident. Thus, all the witnesses examined in support of the say of Guliben-the complainant, in no way support her. The evidence of Guliben now remains on hand for appreciation.

6. True that in law if the Court finds the evidence of a single witness appealing trustworthy and free from doubt, the same can be accepted, and on that basis if the charge is found to have been proved, the accused can be convicted because in law quality counts and not quantity. Mr. Patel, the learned in-charge Public Prosecutor has, therefore, emphatically submitted that this Court may accept the evidence of Guliben which is in all respect acceptable being appealing and set aside the order of acquittal and convict the respondents. The contention does not find favour because the evidence of Guliben is not free from doubt. According to her the respondents reside in her neighbourhood. They were addressing her as a witch, and many times the respondents were stealthily placing a chariot type toys in front of her house as a result there was dissention between her and respondents

on the other hand ; and that had given a rise to enmity between the two. They do not have therefore, a speaking terms. The relations are bitter. Further in the complaint before the police, she stated that the respondent Nos. 2,3 and 4 caused her the injuries by kick and fist blows, but on oath before the Court she has conveniently remained silent on the point. It is also pertinent to note that though she has not come out with a particular case in her F.I.R. before the police, she has the audacity to state before the Court on oath that the respondent broke her roof tiles and entering into the house caused extensive damage to the household goods and was threatened with a murder of his son. When she has thus made alarming and material improvements in her case and she is having enmity with respondents ,it would not be safe and just to place reliance on her sole evidence. In such case, the prudent dictates for cogent corroboration which is wanting in the case. It should also be remembered that her son when the incident happened was at home. The incident happened on the back of her house. Her son must have therefore, come to know about the incident, but her son is not examined and no explanation is given by the prosecution for such omission. When the prosecution has not explained about the omission though the witness was available for examination, the Court is entitled to infer everything against the prosecution. For such reasons, the learned Magistrate is perfectly right in appreciating the evidence, and discarding the evidence of Guliben-the complainant as her evidence is not free from any reasonable doubt. It will not be therefore just on the part of this Court to accept her sole testimony as submitted, and convict the respondent.

7. In the result, there is no justifiable reason to upset the findings of the learned Magistrate. His appreciation of the evidence and conclusions drawn being quite just and proper, the order of acquittal is required to be maintained dismissing the appeal. Consequently, the appeal is hereby dismissed and the order of acquittal is hereby maintained.

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